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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS:

2003 JUN 23 P 4: 17

MARC SPITZER, Chairman
JIM IRVIN
WILLIAM A. MUNDELL
JEFF MATCH-MILLER
MIKE GLEASON

ARIZONA CORPORATION COMMISSION
CLERK'S OFFICE

In the matter of:

DOCKET NO. S-03539A-03-0000

YUCATAN RESORTS, INC., d/b/a
YUCATAN RESORTS, S.A.,
3222 Mishawaka Avenue
South Bend, IN 46615;
P. O. Box 2661
South Bend, IN 46680;
Av. Coba #82 Lote 10, 3er. Piso
Cancun, Q. Roo
Mexico C.P. 77500

RESPONDENT LORY KELLY'S
ANSWER TO THE ARIZONA
CORPORATION COMMISSION'S
TEMPORARY ORDER TO CEASE AND
DESIST AND NOTICE OF
OPPORTUNITY FOR HEARING

RESORT HOLDINGS INTERNATIONAL,
INC. d/b/a
RESORT HOLDINGS INTERNATIONAL,
S.A.,
3222 Mishawaka Avenue
South Bend, IN 46615;
P. O. Box 2661
South Bend, IN 46680;
Av. Coba #82 Lote 10, 3er. Piso
Cancun, Q. Roo
Mexico C.P. 77500

Arizona Corporation Commission

DOCKETED

JUN 23 2003

WORLD PHANTASY TOURS, INC.
a/k/a MAJESTY TRAVEL
a/k/a VIAJES MAJESTY
Calle Eusebio A. Morales
Edificio Atlantida, P Baja
APDO, 8301 Zona 7 Panama

DOCKETED BY 

MICHAEL E. KELLY and LORI KELLY,
husband and wife,
3222 Mishawaka Avenue
South Bend, IN 46615;
P. O. Box 2661
South Bend, IN 46680;

Respondents.

ROSHKA HEYMAN & DEWULF, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

1 Respondent, Lory Kelly, incorrectly enumerated as Lori Kelly (hereinafter "Respondent"),
2 hereby answers the Temporary Order to Cease and Desist and Notice of Opportunity for Hearing
3 (the "C&D"), by admitting, denying and alleging as follows:¹

4 **I.**

5 **JURISDICTION**

6 1. Answering paragraph 1 of the C&D, Respondent denies each and every allegation
7 of paragraph 1 and asserts that no securities are involved in the transactions and, therefore, the
8 Arizona Securities Act is inapplicable, as a matter of law.

9 **II.**

10 **RESPONDENTS**

11 2. Answering paragraph 2 of the C&D, Respondent admits that Yucatan Resorts, Inc.,
12 has a business address located in the United States at 3222 Mishawaka Avenue, South Bend,
13 Indiana, 46615, and a mailing address at P.O. Box 2661, South Bend, Indiana 46680. Respondent
14 is without knowledge or information sufficient to form a belief as to the truth of the remaining
15 allegations of paragraph 2 of the C&D and, therefore, denies the same.

16 3. Answering paragraph 3 of the C&D, Respondent admits that RHI, Inc., has a
17 business address located in the United States at 3222 Mishawaka Avenue, South Bend, Indiana,
18 46615, and a mailing address at P.O. Box 2661, South Bend, Indiana, 46680. Respondent is
19 without knowledge or information sufficient to form a belief as to the truth of the remaining
20 allegations of paragraph 3 of the C&D and, therefore, denies the same.
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26 ¹ Respondent Lory Kelly is filing this Answer strictly to comply with the requirements of Arizona Administrative
27 Code R14-4-305. By filing this Answer, Respondent is not consenting to the Commission's jurisdiction nor is she
waiving any right to assert that (a) the Commission lacks personal jurisdiction over her or (b) there has been a
complete failure of service of process with respect to her.

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4. Answering paragraph 4 of the C&D, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4 of the C&D and, therefore, denies the same.

5. Answering paragraph 5 of the C&D, Respondent admits that Michael E. Kelly is the President of Yucatan Resorts, Inc. Respondent denies each and every remaining allegation contained in paragraph 5 of the C&D.

6. Answering paragraph 6 of the C&D, Respondent denies each and every allegation contained therein.

7. Answering paragraph 7 of the C&D, Respondent denies each and every allegation contained therein.

8. Paragraph 8 of the C&D does not contain any factual allegations and, therefore, requires no response.

**III.
FACTS**

9. Answering paragraph 9 of the C&D, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

10. Answering paragraph 10 of the C&D, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

11. Answering paragraph 11 of the C&D, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

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12. Answering paragraph 12 of the C&D, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

13. Answering paragraph 13 of the C&D, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

14. Answering paragraph 14 of the C&D, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

15. Answering paragraph 15 of the C&D, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

16. Answering paragraph 16 of the C&D, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

17. Answering paragraph 17 of the C&D, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

18. Answering paragraph 18 of the C&D, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

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19. Answering paragraph 19 of the C&D, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

20. Answering paragraph 20 of the C&D, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

21. Answering paragraph 21 of the C&D, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

22. Answering paragraph 22 of the C&D, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

23. Answering paragraph 23 of the C&D, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

24. Answering paragraph 24 of the C&D, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

25. Answering paragraph 25 of the C&D, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

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26. Answering paragraph 26 of the C&D, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

27. Answering paragraph 27 of the C&D, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

28. Answering paragraph 28 of the C&D, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

29. Answering paragraph 29 of the C&D, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

30. Answering paragraph 30 of the C&D, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

31. Answering paragraph 31 of the C&D, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

32. Answering paragraph 32 of the C&D, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

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33. Answering paragraph 33 of the C&D, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

34. Answering paragraph 34 of the C&D, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

35. Answering paragraph 35 of the C&D, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

36. Answering paragraph 36 of the C&D, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

37. Answering paragraph 37 of the C&D, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

38. Answering paragraph 38 of the C&D, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

39. Answering paragraph 39 of the C&D, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

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40. Answering paragraph 40 of the C&D, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

41. Answering paragraph 41 of the C&D, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

42. Answering paragraph 42 of the C&D, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

43. Answering paragraph 43 of the C&D, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

44. Answering paragraph 44 of the C&D, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

45. Answering paragraph 45 of the C&D, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

46. Answering paragraph 46 of the C&D, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

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1 or this proceeding based on the foregoing Answer, its Affirmative Defenses and the Motion to
2 Dismiss filed with this Answer.

3 **VIII.**

4 **SECURITIES DIVISION'S REQUESTED RELIEF**

5 With regard to the Securities Division's Requested Relief, Respondent asks the
6 Commission to deny the Request for a Cease and Desist Order and dismiss this proceeding, deny
7 the Request for restitution because there have been no violations of law, deny the request for
8 administrative penalties, and deny any request that the marital assets of Michael E. Kelly and
9 Respondent Lory Kelly be subject to any order of restitution, rescission, administrative penalties or
10 other affirmative action. Lory Kelly and Michael E. Kelly are not, and never have been, residents
11 of the State of Arizona and, thus, are not subject to Arizona's community property laws. The
12 Request for restitution is inappropriate as the purchasers continue to hold their timeshare interests.
13 Respondent requests that the Commission deny the Requested Relief as identified in Paragraph
14 Nos. 1, 2, 3, 4, and 5 of Section VIII of the C&D.
15

16 **IX.**

17 **HEARING OPPORTUNITY**

18 Respondent has requested a hearing pursuant to A.R.S. § 44-1972.

19 **AFFIRMATIVE DEFENSES**

20
21 57. For her first affirmative defense, Respondent alleges that the C&D fails to state a
22 claim upon which relief can be granted.

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24 58. For her second affirmative defense, Respondent alleges that no security is involved
25 in these alleged transactions and, therefore, there is no proper application of the Arizona securities
26 laws, or jurisdiction of this administrative tribunal.
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59. For her third affirmative defense, Respondent alleges that Arizona's securities registration statutes and regulations do not apply to the sale of timeshares under an approved timeshare plan, pursuant to, *inter alia*, A.R.S. § 32-2197.

60. For her fourth affirmative defense, Respondent alleges that the Commission lacks personal jurisdiction over Respondent and her spouse, Respondent Michael E. Kelly.

61. For her fifth affirmative defense, Respondent alleges that there is a lack of subject matter jurisdiction.

62. For her sixth affirmative defense, Respondent alleges failure to join indispensable parties.

63. For her seventh affirmative defense, Respondent alleges that parties have been misnamed and misjoined in this action.

64. For her eighth affirmative defense, Respondent alleges that there has been a defect in service of process, and that any attempted service of process on Respondent was insufficient and/or ineffective.

65. For her ninth affirmative defense, Respondent alleges that there are collateral proceedings so that there is the threat of inconclusive and contrary results and, therefore, this matter should alternatively be stayed.

66. For her tenth affirmative defense, Respondent alleges that there is no basis for joining her as a named respondent in this action.

67. For her eleventh affirmative defense, Respondent alleges lack of agency.

68. For her twelfth affirmative defense, Respondent alleges that there has been a failure of service of process on Respondent and her spouse, Michael E. Kelly.

1 69. For her thirteenth affirmative defense, Respondent alleges that any ruling in this
2 action would be unconstitutional under the laws of the State of Arizona and under the laws of the
3 United States of America for, *inter alia*, failing to provide due process, among other provisions.

4 70. For her fourteenth affirmative defense, Respondent alleges that application of
5 A.R.S. § 44-2031(C) in this case exceeds the authority granted to the Commission by the Arizona
6 Constitution.

7 71. For her fifteenth affirmative defense, Respondent alleges that application of A.R.S.
8 § 44-2031(C) does not convey personal jurisdiction over Respondent as a non-resident of Arizona.
9

10 72. For her sixteenth affirmative defense, Respondent alleges that all of her actions
11 were taken for a proper purpose.

12 73. For her seventeenth affirmative defense, Respondent alleges that she has not taken
13 any improper action within or from the State of Arizona.

14 74. For her eighteenth affirmative defense, Respondent alleges that Respondent and her
15 spouse, Michael E. Kelly, are not, and never have been, residents of the State of Arizona and, thus,
16 are not subject to Arizona's community property laws.

17 75. For her nineteenth affirmative defense, Respondent alleges that such persons who
18 took any such alleged actions did not have authority, and no agency relationship existed with the
19 other respondents named in this action.
20

21 76. For her twentieth affirmative defense, Respondent alleges that the Commission's
22 claims are barred by the applicable statute(s) of limitations.
23

24 77. For her twenty-first affirmative defense, Respondent states that she did not sell
25 investment contracts under Arizona law.
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78. For her twenty-second affirmative defense, Respondent alleges the claims in the C&D are barred by estoppel.

79. For her twenty-third affirmative defense, Respondent alleges the claims in the C&D are barred by laches.

80. For her twenty-fourth affirmative defense, Respondent alleges that the claims in the C&D are barred by waiver.

81. For her twenty-fifth affirmative defense, Respondent alleges that the claims in the C&D are barred by assumption of risk.

82. For her twenty-sixth affirmative defense, Respondent alleges that the Division has failed to allege securities fraud with reasonable particularity as required by Rule 9(b) of the Arizona Rules of Civil Procedure.

83. For her twenty-seventh affirmative defense, Respondent states that purchasers of timeshare units referred to as Universal Leases did not rely, reasonably or otherwise, on any alleged misrepresentations by Respondent.

84. For her twenty-eighth affirmative defense, Respondent alleges that she did not know, and in the exercise of reasonable care could not have known, of any alleged untrue statements or material omissions as set forth in the C&D.

85. For her twenty-ninth affirmative defense, Respondent states that she has not acted with the requisite scienter.

86. For her thirtieth affirmative defense, Respondent states that she has not employed a deceptive or manipulative device in connection with the purchase or sale of any security.

1 87. For her thirty-first affirmative defense, Respondent states that purchasers of the
2 timeshare units referred to as Universal Leases have suffered no injuries or damages as a result of
3 Respondent's acts or the alleged acts of any of the other respondents named in this action.

4 88. For her thirty-second affirmative defense, Respondent states that she never made
5 any misrepresentations or omissions, material or otherwise.

6 89. For her thirty-third affirmative defense, Respondent alleges that the violations, if
7 any, of the Securities Act, were proximately caused and contributed to by the improper conduct or
8 intervening acts of other third persons who are not named in this action as parties.

9 90. For her thirty-fourth affirmative defense, Respondent alleges that she acted in good
10 faith and did not directly or indirectly induce the conduct at issue.

11 91. For her thirty-fifth affirmative defense, Respondent alleges that purchasers of the
12 timeshare units referred to as Universal Leases have approved and/or authorized and/or directed all
13 of the transactions at issue.

14 92. For her thirty-sixth affirmative defense, Respondent alleges that the length of time
15 between the alleged conduct and the filing of the C&D (May 2003) violates fundamental principles
16 of fairness and the Due Process Clauses of the U.S. and Arizona Constitutions.

17 93. For her thirty-seventh affirmative defense, Respondent states that she has caused no
18 damages.

19 94. For her thirty-eighth affirmative defense, Respondent alleges that purchasers relied
20 on others and not Respondent in connection with the matters at issue in the C&D.

21 95. For her thirty-ninth affirmative defense, Respondent alleges, upon information and
22 belief, that the conduct attributed to the unnamed independent agents in the C&D was outside the
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ONE ARIZONA CENTER
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PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

1 scope of the unnamed independent agents' agreements with the other named respondents to this
2 action.

3 95. For her fortieth affirmative defense, Respondent alleges that the timeshare units are
4 not securities and, thus, the sales agents selling such timeshare units are not required to register as
5 dealers or salesmen pursuant to the provisions of Article 9 of the Securities Act.

6 96. Respondent alleges such other affirmative defenses set forth in Arizona Rule of
7 Civil Procedure 8(c), as may be determined to be applicable through discovery.

8 97. Respondent reserves the right to amend this Answer to assert additional defenses
9 after completion of appropriate discovery.
10

11 X.

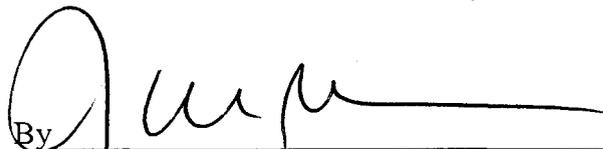
12 **ANSWER AND AFFIRMATIVE DEFENSE REQUIREMENTS**

13 Respondent has fully complied with the Answer and Affirmative Defense requirements.

14 WHEREFORE, there is no basis for the imposition of liability of any kind or nature, and
15 the temporary order to cease and desist should be vacated and there should be no award of any
16 kind or nature against the Respondent.

17
18 RESPECTFULLY SUBMITTED this 23rd day of June, 2003.

19 ROSKA HEYMAN & DeWULF, PLC

20
21 By 

22 Paul J. Roshka, Jr., Esq.
23 Dax R. Watson, Esq.
24 One Arizona Center
25 400 East Van Buren Street, Suite 800
26 Phoenix, Arizona 85004
27 602-256-6100
602-256-6800 (facsimile)
Attorneys for Respondent Lory Kelly

1 ORIGINAL and thirteen copies of the foregoing
2 hand-delivered this 23rd day of June, 2003 to:

3 Docket Control
4 Arizona Corporation Commission
5 1200 West Washington Street
6 Phoenix, Arizona 85007

7 COPY of the foregoing hand-delivered
8 this 23rd day of June, 2003 to:

9 Marc E. Stern
10 Hearing Officer
11 Hearing Division
12 Arizona Corporation Commission
13 1200 West Washington Street
14 Phoenix, Arizona 85007

15 Jaime Palfai, Esq.
16 W. Mark Sendrow, Esq.
17 Securities Division
18 Arizona Corporation Commission
19 1300 West Washington Street, 3rd Floor
20 Phoenix, Arizona 85007

21 COPY of the foregoing mailed
22 this 23rd day of June, 2003 to:

23 Joel Held, Esq.
24 Elizabeth Yingling, Esq.
25 Baker & McKenzie
26 2300 Trammell Crow Center
27 2001 Ross Avenue, Suite 2300
Dallas, Texas 75201
Attorneys for Respondents
Yucatan Resorts, Inc., Yucatan Resorts, S.A.,
RHI, Inc., and RHI, S.A.

Martin R. Galbut, Esq.
Jeffrey D. Gardner, Esq.
Galbut & Hunter, P.C.
2425 East Camelback Road, Suite 1020
Phoenix, Arizona 85016
Attorneys for Respondents
Yucatan Resorts, Inc., Yucatan Resorts, S.A.,
RHI, Inc., and RHI, S.A.

ROSHKA HEYMAN & DEWULF, PLC

ONE ARIZONA CENTER
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FACSIMILE 602-256-6800

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By: Ruth A. Beeshee

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